

ENTERED

October 27, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**ESTELA OREA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.§
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§Civil Action No. 1:16-cv-241
(Criminal No. 1:14-cr-951-1)**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the "Magistrate Judge's Report and Recommendation" (Docket No. 4) in the above-referenced cause of action. The Magistrate recommends that Orea's "Motion Pursuant to 28 U.S.C. § 2255 to Vacate Set Aside Sentence in light of Retroactive Effect of the Clarifying Amendment (794)" (Docket No. 1) be dismissed.

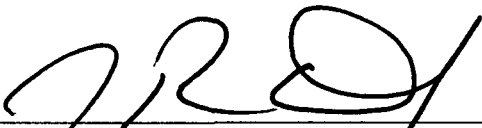
On October 20, 2016, Orea filed an objection to the Magistrate's Report and Recommendation. (Docket No. 8). In her objection, Orea argues that her sentence should be reconsidered in light of Amendment 794 to the United States Sentencing Guidelines, (Docket No. 8), at 1, which is the same argument she made in her original motion. (Docket No. 1), at 1-2.

After a de novo review of the file, the "Magistrate Judge's Report and Recommendation" is **ADOPTED**. It is therefore **ORDERED, ADJUDGED, and DECREED** that to the extent Orea seeks relief under 28 U.S.C. § 2255, her "Motion Pursuant to 28 U.S.C. § 2255 to Vacate Set Aside Sentence in light of Retroactive Effect of the Clarifying Amendment (794)" (Docket No. 1) is **DISMISSED** for failure to state a cognizable claim.

Moreover, to the extent Orea seeks a reduction of her sentence based on a retroactive application of United States Sentencing Guideline Amendment 794, her original motion (Docket No. 1) is construed as seeking relief pursuant to 18 U.S.C.

3582(c)(2) and is **DENIED** because Amendment 794 has not been given retroactive effect under United States Sentencing Guideline § 1B1.10. *See United States v. Drath*, 89 F.3d 216, 218 (5th Cir. 1996) (holding that if an amendment is not listed as retroactive in § 1B1.10, it does not apply retroactively). A certificate of appealability shall not issue.

Signed on this 26th day of October, 2016



Rolando Olvera
United States District Judge